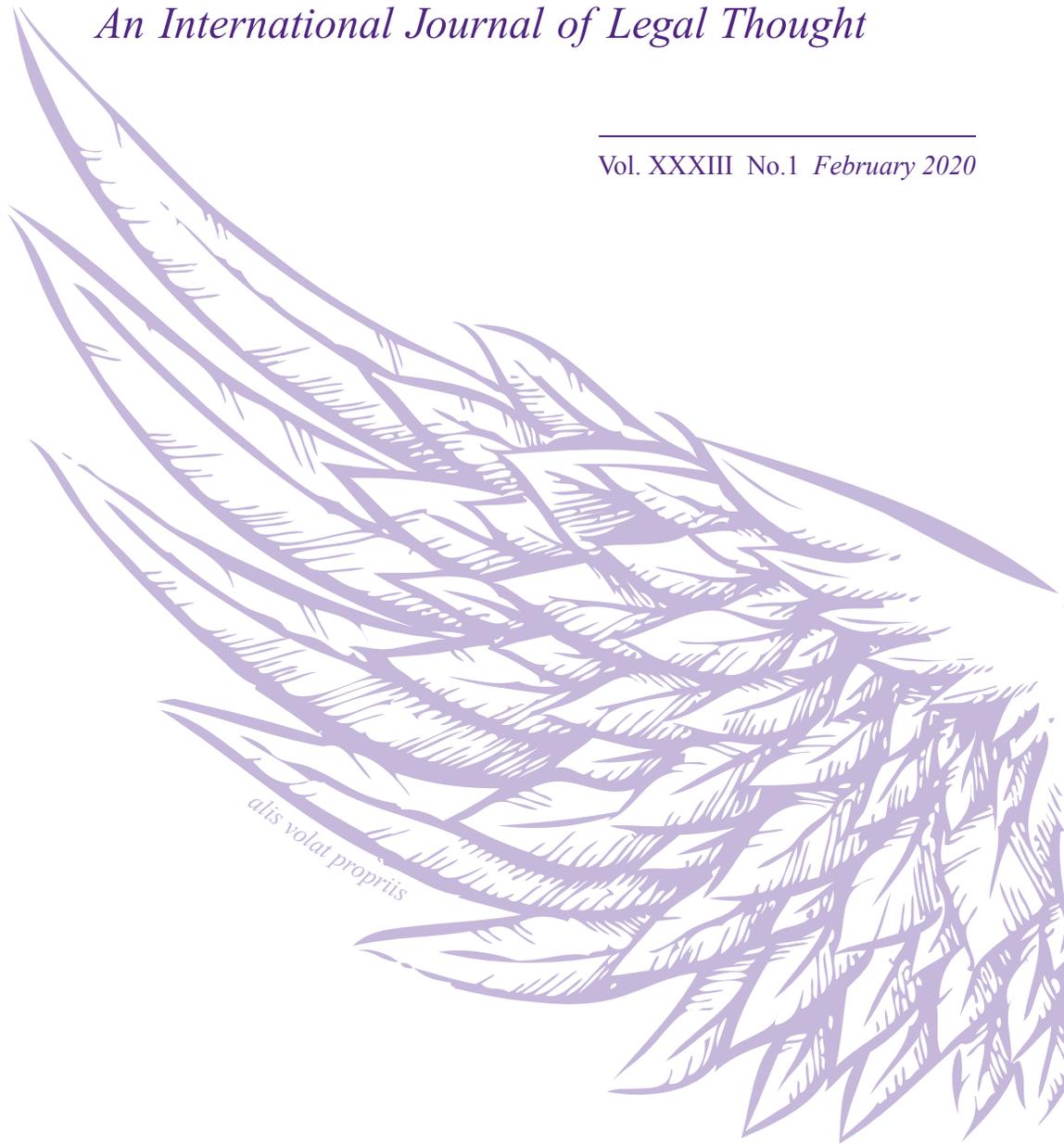

The Canadian Journal of Law & Jurisprudence

An International Journal of Legal Thought

Vol. XXXIII No.1 February 2020



Western  Law

CAMBRIDGE
UNIVERSITY PRESS

Statement of Purpose

The *Canadian Journal of Law & Jurisprudence* serves as a forum for special and general jurisprudence and legal philosophy. It publishes articles that address the nature of law, that engage in philosophical analysis or criticism of legal doctrine, that examine the form and nature of legal or judicial reasoning, that investigate issues concerning the ethical aspects of legal practice, and that study (from a philosophical perspective) concrete legal issues facing contemporary society. The journal does not use case notes, nor does it publish articles focussing on issues particular to the laws of a single nation.

Editorial Board

Editors

Richard Bronaugh
Andrew Botterell

Production Editor

Regina Satorius

Student Editors

Alex Alferiev
Lindsay Armstrong
Madeline Benn
Leigh Clark
Carly N. Horvath
Sara Quinn-Hogan
Rohie Sharma

Western Law Coordinator

Tigger Jourard

Consulting Editors

Alan Brudner
Bruce Chapman
David Dyzenhaus
Leslie Green
Barry Hoffmaster
Charles Jones
Dennis Klimchuk
Margaret Martin
Michael Milde
Jason Neyers
Dennis M. Patterson
Dan Priel
Denise Réaume
Arthur Ripstein
Zoë Sinel
Wayne Sumner
Richard Vernon
Wil Waluchow
Grégoire C. N. Webber
Ernest Weinrib

Cover: The motto of this Journal is *alis volat propriis*. What this motto says is that we fly on our own wings. What it has meant was our being not only self-sustaining and self-publishing, but also going wide with regard to what we view as jurisprudentially attractive and worthwhile as philosophical discovery. The people at Cambridge University Press observed that *CJLJ* has been a successful journal in the field of legal philosophy and they wanted in on the flight. Our prospects have opened and our wings will spread.

Beginning with Volume 28 the *Canadian Journal of Law & Jurisprudence* has been published jointly by Cambridge University Press and the Faculty of Law, the University of Western Ontario.

The journal is included in the Cambridge Core service and can be found at cambridge.org/cjlj.

ISSN: 0841-8209

E-ISSN: 2056-4260

© *Canadian Journal of Law & Jurisprudence* 2020



Applies to text only

TABLE OF CONTENTS

Nayha Acharya	Deciding, ‘What Happened?’ When We Don’t Really Know: Finding Theoretical Grounding for Legitimate Judicial Fact-Finding.....	1
Tatiana Cutts	Materially Identical to Mistaken Payment.....	31
Charles Delmotte	Tax Uniformity as a Requirement of Justice.....	59
Raff Donelson	Describing Law.....	85
David Johnston	<i>The Coxford Lecture</i> Seek the Good: Professional Trust, Justice, and the Rule of Law.....	107
Refia Kaya	Reasonable Accommodation for Age.....	115
Itamar Mann	Eichmann’s Mistake: The Problem of Thoughtlessness in International Criminal Law.....	145
B.L.S. Nelson	Hobbes’s Third Jurisprudence: Legal Pragmatism and the Dualist Menace.....	183
Zhong Xing Tan	The Proportionality Puzzle in Contract Law: A Challenge for Private Law Theory?.....	215
Andy Yu	Equity and Homelessness.....	245

alis volat propriis

AUTHORS

Nayha Acharya (LL.B., Alberta; LL.M., Ph.D., Schulich School of Law, Dalhousie, 2017) is an Assistant Professor at the Schulich School of Law, Dalhousie University, where she teaches and researches in the areas of civil procedure, legal ethics and professionalism, and alternative dispute resolution. Email: nayha@dal.ca

Tatiana Cutts (B.A., B.C.L. and D.Phil., Oxon, 2015) is Assistant Professor in Law at the London School of Economics and Political Science. Her research interests span private law, legal theory and law and technology. Email: t.cutts@lse.ac.uk

Charles Delmotte (B.A., M.A., J.D. and Ph.D., Ghent University, 2018) is currently a postdoctoral Fellow at NYU Law and an Edison Fellow at George Mason University. His research revolves around philosophy of taxation, and he has published multiple articles that bridge philosophy, tax law and political economy. Email: Charles.Delmotte@nyu.edu

Raff Donelson (B.A., Williams College; M.A., Chicago; J.D., Ph.D., Northwestern, 2017) is an Assistant Professor of Law and Philosophy at Louisiana State University. His key areas of research are criminal procedure, general jurisprudence, metaethics, and American pragmatism. Email: rdonelson1@lsu.edu

The Right Honourable David Johnston (B.A., Harvard; LL.B., Cambridge; LL.B., Queen's, 1966) served as Canada's 28th Governor General from 2010-2017. Prior to that he served as President of the University of Waterloo, as Principal of McGill University, and as Dean of Western University's Faculty of Law. He has taught as a faculty member at Queen's University, the University of Toronto, and McGill University and is the recipient of 3 dozen honorary degrees or fellowships and the author or co-author of 30 books.

Refia Kaya (LL.B., Bilkent University; LL.M., Goethe University Frankfurt and Free University of Brussels (The European Academy of Legal Theory), 2016) is a doctoral candidate in law at University of Louvain, Hoover Chair. Her research interests include discrimination law, theories of equality, age discrimination and environmental law. She has published several articles on the use of discrimination law in environmental litigation. Email: refia.kadayifci@uclouvain.be

Itamar Mann (LL.B., Tel Aviv University; LL.M. and J.S.D., Yale Law School, 2014) is an Associate Professor at the University of Haifa, Faculty of Law, where he is also a Principal Investigator at the Minerva Center for the Rule of Law under Extreme Conditions. His research interests include international law, human rights, refugee law and refugee studies, political theory, and legal history. His book, *Humanity at Sea: Maritime Migration and the Foundations of International Law*, came out with Cambridge University Press in 2016.
Email: itamar.mann@gmail.com

Benjamin (B.L.S.) Nelson (B.A.H., Western; M.A., York (Toronto); Ph.D., Waterloo, 2017) is a member of the National Coalition of Independent Scholars. His research interests include publicity and promulgation of law, science-based public policy, comparative philosophy of law, and the epistemology of risk in the social sciences. Email: bsnelson@uwaterloo.ca

Zhong Xing Tan (LL.B., National University of Singapore; LL.M., Harvard, 2017) is an Assistant Professor at the National University of Singapore Faculty of Law. His research interests include contract law and more generally private law and legal theory. Email: lawtx@nus.edu.sg

Andy Yu (B.A., McGill; B.Phil. and D.Phil., Oxford; J.D., Toronto, 2019) is articling at Paliare Roland LLP. His interests include legal philosophy, administrative law, contract law, and issues surrounding data and privacy.
Email: andy.yu@paliareroland.com